



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX**

**75 Hawthorne Street  
San Francisco, CA 94105**

November 12, 2008

John Engbring  
Assistant Regional Manager  
Water and Fisheries Resources  
California and Nevada Region  
U.S. Fish and Wildlife Service  
2800 Cottage Way, Room W-2606  
Sacramento, CA 95825-1846

Subject: EPA Cooperating Agency Status on Bay Delta Habitat Conservation Plan

Dear Mr. Engbring:

Thank you for your recent letter inviting the U.S. Environmental Protection Agency (EPA) to be a cooperating agency for preparation of the Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the Bay Delta Habitat Conservation Plan (BDCP) for the Sacramento-San Joaquin Delta. As you know, EPA has for many years worked with the Department of the Interior and other federal agencies to address the environmental and water management challenges in the Bay and Delta. We believe that a Habitat Conservation Plan (HCP) developed under the federal Endangered Species Act (ESA) could be a useful complement to the other ongoing programs aimed at restoring this important resource. In this spirit, we accept the invitation to participate in the development of the environmental analysis and documentation, consistent with our expertise and jurisdictional interests.

At this point in time, we anticipate involvement of staff from two EPA offices: the Environmental Review Office (ERO, within the Communities and Ecosystems Division) and the Water Division. The corresponding areas of expertise would be (1) compliance with the National Environmental Policy Act (NEPA), (2) protection of the entire range of designated uses as articulated in the Clean Water Act (CWA), (3) protection of drinking water quality under the federal Safe Drinking Water Act (SDWA), and (4) implementation of the CWA Section 404 program, which we cooperatively implement with the U.S. Army Corps of Engineers (Corps).

We have been informally following the development of the BDCP over the past two years. We have also reviewed the initial notice of intent (NOI) issued jointly by the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) on January 24, 2008, and the subsequent NOI issued by those agencies and the U.S. Bureau of Reclamation (USBR) on April 15, 2008. In response to the first NOI, EPA submitted a short scoping letter to NMFS and USFWS, a copy of which is attached. We believe that many of our previous scoping comments are still applicable.

EPA continues to be concerned about the broadly stated purpose of the proposed program. Under NEPA, action agencies must examine a reasonable set of alternatives to the proposed action. The range of alternatives will generally mirror the range of the proposed actions. At present, the proposed set of actions is extremely ambitious, and we are concerned that the NEPA evaluation of alternatives could overwhelm the proposed schedule.

We understand from your representative at the October CALFED Agency Coordination Team meeting that the federal action agencies intend to “re-scope” this NEPA document in 2009, after release of the draft Conservation Strategy in late 2008. This release would also roughly coincide with the release of a federal agency BDCP purpose and need statement. Additional scoping would afford an opportunity to consider more specifically the proposed actions, alternatives, and potential impacts. EPA proposes that we meet with the federal action agencies after the above documents are released to discuss specifically where EPA could most usefully apply its expertise and limited resources in this NEPA analysis.

In accepting your invitation to become a cooperating agency, we also offer the following considerations:

First, as you know, EPA’s resources are extremely limited. In the event that we identify a significant technical role for EPA in developing parts of the proposed analyses, we will need to work with you to identify the resources for that activity.

Second, you suggest in your letter that this EIS/EIR should serve as the NEPA compliance document for any federal permit actions envisioned in the proposal. Identifying and evaluating the “least environmentally damaging practicable alternative” (LEDPA) under the CWA 404 program requires an alternatives analysis as described in the CWA Section 404(b)(1) Guidelines. This CWA 404 alternatives analysis process could potentially be coordinated with the EIS/EIR effort. EPA will discuss this suggestion with the Corps (co-regulators in the CWA 404 program).

Third, EPA has ongoing review and approval obligations for changes to water quality standards under CWA Section 303. Historically, this review and approval function has involved consultation under the ESA. In some cases, it may be useful to coordinate ESA consultations with the NEPA review process, if doing so can expedite both processes.

Finally, we would like to emphasize that our role as a cooperating agency during document preparation will be technical in nature, and that this assistance does not abridge or otherwise affect our responsibilities for independent review of the Draft and Final EIS under Section 309 of the Clean Air Act and the related Council on Environmental Quality regulations.

The lead contact for our work will be Carolyn Yale, in the Water Division (415-972-3482; yale.carolyn@epa.gov). She will be coordinating with Laura Fujii in the ERO, which implements our independent NEPA/309 review obligations. At this time, we do not anticipate the need for a memorandum of agreement formalizing our participation.

We look forward to working with USFWS, NMFS, USBR and the other participating agencies in this important effort.

Sincerely,

/s/

Kathleen M. Goforth, Manager  
Environmental Review Office  
Communities and Ecosystems Division

/s/

Karen Schwinn, Associate Director  
Water Division

Attachment: EPA March 17, 2008 BDCP Scoping Letter

cc: Ted Meyers, National Marine Fisheries Service  
Susan Fry, U.S. Bureau of Reclamation  
Mike Jewell, U.S. Army Corps of Engineers  
Dorlores Brown, California Department of Water Resources  
Scott Cantrell, California Department of Fish and Game